

REMARKS/ARGUMENTS

This paper is responsive to the Office Action mailed September 18, 2009. Claims 1-21 were pending before submission of this paper. Claims 1-21 stand rejected. Specifically, claims 1-21 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over various combinations of Covisint articles, Oracle articles, King, Kaplan, APA (Stephens), and/or Official Notice. Applicants respectfully disagree. Claims 1, 4-5, 10, 12-14, and 19-20 have been amended. Support for all amended claims can be found in the specification, and no new matter has been added by these amendments. Reconsideration of the claims in view of the amendments and the following remarks is respectfully requested.

I. Examiner Interview

A telephonic interview with Examiner Fadok was conducted on December 1, 2009. The undersigned represented Applicants. During the interview, a general discussion of the subject matter of the claims was conducted. While no agreement as to allowance was reached, Examiner Fadok graciously agreed to, after submission of this response, review Applicants' specification and provide any suggestions for moving prosecution forward. Applicants appreciate Examiner Fadok's offer and present this response accordingly.

II. Declaration under 37 C.F.R. 1.131

The Office Action at page 2 alleges that Applicants' declaration filed on June 30, 2009 (hereinafter "Declaration") is ineffective to overcome the Covisint references. Applicants respectfully disagree for at least the following reasons.

A. Diligence

The Office Action at pages 2-3 alleges that the evidence provided with the Declaration is insufficient to establish diligence from a date prior to the date of reduction to practice of the Covisint reference to either a constructive or actual reduction to practice. Applicants respectfully disagree.

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. M.P.E.P. 2138.06. Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor. *Id.* Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. *Id.* Applicants respectfully submit that the evidence of diligence provided with the Declaration is sufficient to antedate the Covisint references.

For example, Exhibits B, C, D, and E of the Declaration show a series of letters from attorneys preparing the present application for Applicants which reference various drafts of the application. These exhibits, therefore, demonstrate an ongoing process including reviewing and revising drafts of the application. In particular, the exhibits demonstrate that Applicants' attorneys were diligently revising drafts of the present application and sending those drafts to the inventors for review. As noted in the paragraph 5 of the Declaration, the invention was disclosed to Applicants' attorneys prior to the earliest date of the Covisint references. Thus, together, the exhibits demonstrate that Applicants and their attorneys were diligently preparing the present patent application during a time before the earliest data of the Covisint reference to the filing date of this application.

B. Conception

The Office Action on pages 3-5 alleges that the evidence submitted with the Declaration is insufficient to establish a conception of the invention prior to the effective date of the PR Newswire reference.

As an initial matter, Applicants are unsure which of the Covisint references the Office Action is referring to as the PR Newswire reference. Nevertheless, Applicants submit that the evidence provided in the Declaration does indeed establish conception prior to the effective date of all the Covisint references.

"Conception is the mental part of the inventive act, but it must be capable of proof, as by drawings, complete disclosure to another person, etc." M.P.E.P. 715.07(III). Applicants submit that the evidence provided in the Declaration provides such evidence. Exhibit A, for example, shows an invention disclosure form providing some details of a multiple

exchange instance. For example, under “Description of the solution of the invention,” Exhibit A describes “Branded Exchanges” and contrasts those with “a very loose connection of major players on disparate hubs” which “is inferior” to Applicants’ invention. This demonstrates that Applicants conceived of a single hub (common instance) for implementing multiple exchanges prior to the earliest date of the Covisint references. Further, any details of the claimed invention not in the disclosure form of Exhibit A are filled in with paragraph 5 of the declaration by which the inventors declare that their conception included “a definite and permanent idea” in their minds, as recited in the pending independent claims. Therefore, for at least these reasons, Applicants respectfully submit that Applicants’ Declaration, when considered in connection with the provided evidence, demonstrates conception of the invention prior to all of the Covisint references.

C. Actual Reduction to Practice

The Office Action on pages 5-6 alleges that the evidence submitted is insufficient to establish an actual reduction to practice. Applicant notes that “37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter...[including] conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).” M.P.E.P. 715.07(III). As noted above and in Applicants’ previous response, such as been shown through submission of the Declaration. Therefore, Applicants respectfully submit that establishment of an actual reduction to practice is not necessary to disqualify the Covisint references as prior art.

In addition, the Office Action on page 7 notes that Applicants use the year 2005 in paragraphs 5 and 6 of the Declaration. Applicants confirm that, as apparent from the statements in the Declaration with regard to the dates of the Exhibits, this is a typographical error and that the year 2000 was intended.

III. Claims 1, 3, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 20 Are Allowable Under 35 U.S.C. § 103 Over Covisint (a collection of articles Covisint 1, 2, 2.1 and 3) or (Oracle a collection of articles Oracle 1-7), in View of King (US 5,319,542) and Kaplan (US 5,701,460).

Claims 1, 3, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Covisint or Oracle in view of King and Kaplan. Applicants respectfully disagree. First, Applicants respectfully submit that the Covisint references are not prior art at least for previously-discussed reasons. Nevertheless, even assuming *arguendo* that the Covisint references are prior art, the proposed combination of Covisint, Oracle, King, and Kaplan still would not render the claims obvious under 35 U.S.C. § 103.

With regard to rejections under 35 U.S.C. § 103, the Examiner must provide evidence which as a whole shows that the legal determination sought to be proved (*i.e.*, the reference teachings establish a *prima facie* case of obviousness) is more probable than not. M.P.E.P. § 2142. Accordingly, “the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” M.P.E.P. § 2142; *see KSR International Co. v. Teleflex, Inc.*, 550 U.S.398, 82 USPQ 2d 1385, 1395-97 (2007).

A. Independent Claim 1

Applicants’ claim 1, as amended, recites:

1. A multiple exchange instance, comprising:
a plurality of exchanges; and
a common instance for implementing the exchanges, the exchanges sharing a set of common components and each exchange having a respective view having respective unique components, wherein the common instance comprises a database divided into a plurality of sub-schemas, and wherein each of the exchanges is singularly associated with and implemented within a respective one of the plurality of sub-schemas providing a respective partial view of the common instance, wherein the common components enable a trading partner client of the common instance to perform at least one common communication operation collectively for a plurality of the exchanges, and wherein each of the exchanges is allocated to a different trading partner.

Applicants respectfully submit that such subject matter as recited in claim 1 is not taught, either individually or in combination, by Covisint, Oracle, King, or Kaplan at least for reasons previously discussed above and in Applicants' previous responses. Moreover, even assuming *arguendo* that the proposed combination of references teaches all elements of claim 1 prior to the proposed amendment, Applicants have amended claim 1 to recite "the common components enable a trading partner client of the common instance to perform at least one common communication operation collectively for a plurality of the exchanges." Applicants submit that such subject matter is supported by at least page 12, lines 2-5 of Applicants' specification. Such subject matter is not disclosed, taught, or suggested by the cited references, either individually or in combination.

For example, the King, Kaplan, and Oracle references are not directed to implementing multiple exchanges in a common instance and, therefore, do not teach such subject matter. Oracle, for example, is a series of articles directed to general descriptions of various Oracle products and plans for future products. None of the Oracle references, however, explicitly disclose that "the common components [of a common instance] enable a trading partner client of the common instance to perform at least one common communication operation collectively for a plurality of the exchanges," as recited in claim 1. Likewise, King is directed not to implementation of multiple exchanges in a common instance, but to a system that "facilitates the user in electronically ordering items from suppliers" and that includes an electronic catalog that includes a public catalogue and a private catalogue. King, Abstract. According to King, "the Public catalog is stored on a publically available database for access by a customer/Requestors" and "the Private catalogue is resident on a Customer's computer system." *Id.* As best understood by Applicants, King does not discuss multiple exchange instances as part of a common instance, as recited in claim 1. Likewise, Kaplan is not directed to implementing multiple exchanges in a common instance, but to "a system for generating a structured query language query to extract data from a database."

Covisint also does not teach "the common components enable a trading partner client of the common instance to perform at least one common communication operation collectively for a plurality of the exchanges," as recited in claim 1. For example, the Covisint

references merely broadly describe a Covisint product which, as best understood by Applicants, had not been developed at the time the references were published. For example, Covisint1 on page 29 (also labeled as “Page 21 of 31”) answers the question of “What services will Covisint offer?” (emphasis added). The answer, as provided by the reference, is that “The exchange will provide procurement, supply chain, and product development solutions” and that “Covisint will provide the best technology available to transform the level of connectivity, visibility, and collaboration in each supply chain, while maintaining the highest levels of security and confidentiality.” The reference continues to state that “It will offer a comprehensive online marketplace for the procurement of automotive parts and supplies and other products and services for the members of the automotive industry (i.e., OEMs, suppliers, partners, dealers, and others).” This does not describe a multiple exchange instance where “the common components enable a trading partner client of the common instance to perform at least one common communication operation collectively for a plurality of the exchanges,” as recited in claim 1.

Therefore, at least because this element is not taught, individually or in combination, by Covisint, Oracle, King, or Kaplan, Applicants respectfully submit that claim 1 is allowable under 35 U.S.C. § 103.

B. Independent Claim 10

Applicants respectfully submit that claim 10 is allowable at least for reasons similar to those discussed above in connection with claim 1. For example, claim 10 recites a computer-readable storage medium having stored thereon instructions that include “instructions for causing said at least one processor to perform, at the direction of a trading partner client of the common instance, at least one common communication operation collectively for a plurality of the exchanges.” For at least reasons including some of those discussed above, Applicants respectfully submit that the proposed combination of Covisint, Oracle, King, or Kaplan, does not teach such subject matter as recited in claim 10. Therefore, Applicants respectfully submit that claim 10 is allowable under 35 U.S.C. § 103 over Covisint and Oracle in view of King and Kaplan.

C. Independent Claim 20

Applicants respectfully submit that claim 20 is allowable at least for reasons similar to those discussed above in connection with claim 1. For example, claim 20 recites a multiple exchange instance that includes common components allowing an operator “to use the common components to perform collective input/output for a group of the exchanges.” For at least reasons including some of those discussed above, Applicants respectfully submit that the proposed combination of Covisint, Oracle, King, or Kaplan, does not teach such subject matter as recited in claim 20. Therefore, Applicants respectfully submit that claim 20 is allowable under 35 U.S.C. § 103 over Covisint and Oracle in view of King and Kaplan.

D. Official Notice, Allegedly Admitted Prior Art, and Dependent Claims

The Office Action relies on official notice to reject claims 4, 5, 14, 15, 21. Specifically, the Office Action takes official notice that “the use of authentication techniques when entering a portal was old and well known in the art at the time of the invention” and that “it was old and well known in the art at the time of the invention to permit input and output to an online catalog.” The Office Action at page 16 alleges that Applicants’ arguments and comments in Applicants’ previous responses do not appear to traverse what the Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made or, alternatively, that Applicants’ traverse was not adequate because Applicants have not specifically pointed out the supposed errors in the examiner’s action. Applicants respectfully disagree.

As an initial matter, Applicants respectfully submit that all dependent claims depend from one of the independent claims discussed above and, therefore, are allowable at least for this reason. Thus, the questions regarding official notice are moot. Nevertheless, Applicants respectfully submit that official notice has not been properly taken.

As noted in the Office Action at page 16, “to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” M.P.E.P. 2144.03(C). However, “It would not be appropriate for the

examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” Applicants, in their previous response with the filing of a Request for Continued Examination, have challenged the facts to which Official Notice was taken as not capable of instant and unquestionable demonstration as being well-known. Further, Applicants have provided evidence from their specification demonstrating that such facts are indeed not capable of instant and unquestionable demonstration as being well known. (See Section E of Applicants’ response filed June 30, 2009). Accordingly, Applicants have pointed out and explained the errors in the Official Notice taken in the Office Action. Therefore, for at least these reasons, Applicants respectfully request documentary support for any future official notice taken.

Further, even assuming *arguendo* the facts for which official notice is taken, such facts would still not render the corresponding claims obvious. For example, amended claims 4 and 14 recite that “the input/output comprises a collective authentication operation for each of the exchanges.” Even assuming that the use of authentication techniques when entering a portal was old and well known in the art at the time of the invention, Applicants respectfully submit that collective authentication for a plurality of exchanges implemented in a common instance would not have been. Therefore, claims 4 and 14 are allowable under 35 U.S.C. § 103 regardless of whether official notice has been properly taken.

As another example, amended claims 5 and 15 recite that “the common input/output comprises a collective catalog content input operation for each of the exchanges.” Thus, even assuming that input and output to an online catalog was old and well known at the time of invention, Applicants respectfully submit that collective input/output, as recited in claims 5 and 15 would not be well known in the art. Therefore, Applicants respectfully submit that claims 5 and 15 are also allowable under 35 U.S.C. § 103 regardless of whether official notice is properly taken.

Finally, in the Response to Arguments section of the Office Action on page 14, the Office Action alleges that Applicants’ traverse of official notice was not seasonable. No supporting citations to case law or the M.P.E.P. are provided in support of this assertion. Applicants respectfully submit that official notice was seasonably traversed at least because

official notice was traversed before closing of prosecution on the merits (before a final office action as well as after filing an request for continued examination), and at least because Applicants have otherwise traversed the rejections of the claims. Applicants are unaware of any legal authority to the contrary. Thus, Applicants respectfully submit that Applicants' traverse of official was seasonable and adequate.

E. Allegedly Admitted Prior Art

In rejecting claims 2 and 12, the Office Action at page 11 alleges that "facilitating communication between the exchanges was old and well known in the art." The Office Action explains further by asserting that Applicants' specification at paragraphs 8 and 30 states "that the industry standard XML may be used to facilitate communications between the businesses in a manner that is obvious and predictable." Applicants respectfully disagree

First, with respect to paragraph 8, Applicants' specification discusses "separate instances" of an e-commerce site, and not a plurality of exchanges implemented in a common instance, as recited in claims 1 and 10 (from which claims 2 and 12 depend, respectively). Applicants' specification does admit or otherwise state that facilitating communication between multiple exchanges implemented in a common instance is old in the art.

With respect to paragraph 30, the paragraph is directed to an aspect of an embodiment of Applicants' invention, namely, an embodiment that utilizes XML to implement communications among exchanges implemented in a common instance. To constitute admitted prior art, the specification must identify work done by another. M.P.E.P. 29(I)-(II)(emphasis added). By citing to paragraph 30 of Applicants' specification, the Office Action cites to Applicants' own work. As a result, Applicants respectfully submit that paragraph 30 of Applicants' specification cannot be used to support an allegation of admitted prior art.

Therefore, for at least the foregoing reasons, Applicants respectfully submit that facilitating communication between the exchanges, as recited in claims 2 and 12, is not admitted prior art. Further, as none of the cited references teach facilitating communication between exchanges of a common instance, as recited in claims 2 and 12, Applicants respectfully submit that these claims are allowable under 35 U.S.C. § 103.

IV. Amendment To The Claims

Unless otherwise specified or addressed in the remarks section, amendments to the claims are made for purposes of clarity, and are not intended to alter the scope of the claims or limit any equivalents thereof. The amendments are supported by the specification and do not add new matter. In addition, by focusing on specific claims and claim elements in the discussion above, Applicants do not imply that other claim elements are disclosed or suggested by the references. In addition, any characterizations of claims and/or cited art are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by another prosecution. Accordingly, reviewers of this or any child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present disclosure.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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